DOCUMENT RESUME

ED 219 046 HE 015 324

AUTHOR Marcus, Laurence R.; Perkins, Eric M.
TITLE New Jersey v. Shelton College: State Regulation v. Religious Freedom? ASHE Annual Meeting 1982 Paper.
PUB DATE Mar 82
NOTE 17p.; Paper presented at the Annual Meeting of the Association for the Study of Higher Education (Washington, DC, March 2-3, 1982).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Certification; *Church Related Colleges; Constitutional Law; *Court Litigation; *Disclosure; Higher Education; Information Needs; Institutional Evaluation; Legal Problems; Religious Factors; State Boards of Education; State Church Separation; *State Licensing Boards; State Standards
IDENTIFIERS *ASHE Annual Meeting; New Jersey; New Jersey v Shelton College; *Shelton College NJ

ABSTRACT

The case, "New Jersey v. Shelton College," is analyzed using the briefs of both parties, the judicial opinions, and the relevant literature. The case is a classic church-state confrontation likely to reach the U.S. Supreme Court. The college is an instructional offshoot of the fundamentalist Bible Presbyterian Church. In 1971, after a protracted legal battle, the New Jersey Board of Higher Education removed the license of Shelton College to award degrees in the state since Shelton failed to meet the Board's minimum standards. The college moved its operation to Florida where it received licensure. However, in 1979 after submitting an incomplete application for New Jersey licensure, Shelton reopened its New Jersey campus. The Board successfully enjoined Shelton in state court, but Shelton sent to federal court and won the right to recruit students, offer credit-bearing courses, and award degrees while the case proceeded through the state court system. In 1979 the college initially submitted a significant portion of the material required as part of the licensure process, but refused to provide requested information on financial stability or on the qualifications of its faculty. The college asserted that its religious beliefs would not permit it to participate in the state licensure process, and that the process unlawfully infringed upon its constitutional rights. However, Shelton College was seeking to offer in New Jersey baccalaureate degree programs in such nonsectarian disciplines as English, history, business education, and the natural sciences. Federal cases providing a basis for the state court ruling, and the federal district court proceedings are reviewed. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED219046

NEW JERSEY v. SHELTON COLLEGE: STATE REGULATION v. RELIGIOUS FREEDOM?

Laurence R. Marcus
Eric M. Perkins

This paper is intended to discuss the issues in the litigation between New Jersey and Shelton College. Any opinions expressed herein represent those of authors and not of the Department or Board of Higher Education nor of the State of New Jersey.

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Laurence R. Marcus
Eric M. Perkins

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

HE 015 324

Association for the Study of Higher Education

The George Washington University / One Dupont Circle, Suite 630 / Washington, D.C. 20036
(202) 296-2597

This paper was presented at the Annual Meeting of the Association for the Study of Higher Education held at the Washington Hilton in Washington, D.C. March 2-3, 1982. This paper was reviewed by ASHE and was judged to be of high quality and of interest to others concerned with the research of higher education. It has therefore been selected to be included in the ERIC collection of ASHE conference papers.

New Jersey v. Shelton College: State Regulation v. Religious Freedom?

Shelton College, an instructional offshoot of the fundamentalist Bible Presbyterian Church which is headed by the controversial Reverend Carl McIntyre, has been based in Cape May, New Jersey for many years. In 1960 the College sued the New Jersey Board of Education after the Board took action to terminate the institution's license to award collegiate degrees. The College asserted that New Jersey's statutory licensure process for higher educational institutions violated the College's constitutional right of free speech. The case ended in the State Supreme Court. That Court held that the licensure of institutions of higher education legitimately fell within the State's police power, noting that, "the public interest in higher education has been evident since medieval times" and that it is "the degree, evidential as it is of academic attainment, which especially is an appropriate object of regulation." Shelton College v. State Board of Higher Education, 48 N.J. 501 (1967). Following subsequent litigation on procedural issues concerning license revocation, In Re Shelton College, 109 N.J. Super 488, 263 A 2d 810 (1970), the New Jersey Board of Higher Education revoked Shelton's license in 1974 for failing to meet the Board's minimal academic standards. Shelton then left its buildings in Cape May and opened in Cape Canaveral, Florida. However, the College was unable to sustain its enrollments following the move, and in February of 1979, Shelton reapplied to the New Jersey Board of Higher Education for a license to grant degrees from its Cape May facility. The College initially submitted a significant portion of the material required as part of the licensure process. It refused, however, to provide requested information on financial stability or on the qualifications of its faculty.

In the fall of 1979 State officials learned that Shelton College had commenced operations without a license. The State Department of Higher Education

began an action in the New Jersey Superior Court seeking to restrain the College prior to the granting of a State license. To defend its action. the College engaged the services of William Bentley Ball, the attorney who successfully argued the landmark case of Wisconsin v. Yoder, 406 U.S. 205 (1972) and many other significant religious freedom actions. The College then asserted for the first time that its religious beliefs would not permit it to participate in the State licensure process, and that the process unlawfully infringed upon its constitutional rights. (Shelton College objected to any and all aspects of State licensure. However, it should be noted that this is not a case in which a religious institution solely intends to offer religious instruction for its members or for the public at large. Rather, Shelton College was seeking to offer in New Jersey baccalaureate degree programs in such non-sectarian disciplines as English, History, Business Education and the Natural Sciences. Shelton argued that its instruction in these disciplines is from the perspective of its particular religious beliefs and, thus, qualifies it for exemption from regulation.)

The State won a temporary injunction from the State Court, but the College immediately sought relief from the Federal District Court of New Jersey. In a decision which was in itself a landmark concerning federal procedure, the Federal Court altered the form of the State Court injunction and retained jurisdiction of the matter to review the final order of the State Court.*

---

*The State had argued that the "abstention doctrine" required that the Federal Court not interfere in the State Court proceeding, citing Railroad Commission v. Pullman Company, 312 U.S. 496 (1941) and Younger v. Harris, 401 U.S. 37 (1971). Judge Dickinson Debevoise disagreed and took jurisdiction of the matter, N.J. Phila. Presbytery v. N.J. State Board of Higher Education, 482 F. Supp. 968 (D.N.J. 1980). This decision was subsequently upheld by the Court of Appeals for the Third Circuit 654 F 2d 868 (3 Cir.1980) .

The State Licensure Requirement

A review of New Jersey's licensure scheme is critical to an understanding of the issues raised herein. New Jersey statutes provide that all institutions of higher education operating in New Jersey must, prior to the commencement of operation, obtain a license from the State Board of Higher Education, (N.J.S.A. 18A:68-3). Additionally, colleges must submit "the basis or conditions" for awarding a degree to the Board of Higher Education for approval, (N.J.S.A. 18A:68-6).*

The regulations enacted pursuant to the licensure statute require institutions to submit information which includes the academic qualifications of their faculty, an audited financial statement, size of library holdings, current or estimated enrollment, class size and related material.

Several arguments are advanced in support of the State regulation of religious colleges. The primary argument is that of consumer protection. The "consumer," however, can be divided into two categories, the consumer student and the consumer employer. Each year there are reports of individuals who are defrauded by "educational institutions." Typically, such individuals have minimal knowledge of postsecondary institutions and their academic standing. In some states, store front "colleges" open and close within a short time leaving students with nothing to show for their tuition and with little hope of recouping the money they have paid. Others are defrauded when they attempt to utilize credits from unaccredited colleges. Few realize that such credits are not transferrable to reputable institutions and are not accepted by graduate and professional schools.

States have sought to protect against this by requiring the registration and licensure of postsecondary institutions. Licensing standards frequently include

---

*Pursuant to the statute, colleges chartered by the State prior to April 7, 1887 are exempted from this program approval requirement.

a review of the institutions finances, physical facilities, and advertising. Thus, on one level New Jersey's system of licensure represents a modest attempt to protect the ill-informed student.

The role of the state in the protection of the integrity of an academic degree has also been called into question in this litigation. This role is intertwined with the second level of consumer protection, that provided to prospective employers. Employers frequently rely upon state licensure as an assurance that job applicants are graduates of collegiate level programs that meet minimal standards of acceptability. Similarly, groups which provide professional credentials require graduation from licensed and/or regionally accredited institutions. For example, in New Jersey, as in many other states, school teachers must be graduates of accredited institutions in order to obtain a teaching license. The courts have upheld the right of a state to license certain professions such as medicine and law despite religious claims. Regulation of these professions has been premised on the belief that an individual must have mastered a certain body of knowledge in order to practice in such fields. (It is clear at least in the view of the Federal District Court in this matter that an undergraduate college degree no longer represents such an achievement. In spite of the testimony of expert witness educators to the contrary, the federal judge noted that "It is common knowledge that all manner of institutions give all manner of degrees, having varying prestige and influence." Thus, it did not matter to him that the Shelton degree may be meaningless, since the marketplace is crowded with low quality degrees already.)

There is arguably a third ground upon which the State requires licensure: the coordination and planning of higher education in the State. This role is limited in some states to public institutions where state regulation is intended to prevent the duplication of services provided by increasingly scarce public tax revenues. The state must be informed of the program offerings and the quality of institutions to assess and allocate public resources. While it is conceded that this is a relatively minor function of licensure at the present time,

its importance may well increase in the days ahead as the governmental resources devoted to higher education dwindle and as the independent sector relies to a greater extent on public financing.

The Religious Liberty Claim

A full trial on Shelton's claim was held before Judge Philip Gruccio of the State Superior Court in the spring of 1980.

The attorneys for Shelton College contended that the New Jersey licensure statutes, when applied to Shelton, violated the Free Exercise (religious liberty) Clause of the First Amendment and resulted in excessive entanglement between government and religious institutions in contravention of the Establishment (separation of church and state) Clause of the First Amendment. They further argued that the State statute which barred the use of the word, "College," in Shelton's title without State approval deprived the institution of due process of law.

Shelton based its arguments upon the U.S. Supreme Court ruling in Sherbert v. Verne, 374 U.S. 398 (1963), which held that the state must demonstrate a "compelling state interest" in order to impose regulations which "burden the free exercise of religion." Further, citing Wisconsin v. Yoder, the case which allowed the Old Order Amish to remove their children from public school after the eighth grade, they argued that the application of a state requirement to a religious institution must be able to pass the following tests: first, is there a genuine religious liberty claim; second, is that liberty jeopardized by the requirement; and third, is there a compelling state interest which justifies the requirement?

In response to the first test, Shelton's attorneys cited Federal case law setting forth definitions of religion and religious belief. They contended that Shelton College was congruent with those definitions: it was established by a religion in fulfillment of its doctrine; religion pervades its curriculum and extra curricular activities; its officials, faculty and students held the Fundamental Christian values of the Bible Presbyterian Church; and its students

fulfilled religious duty by attending Shelton. They claimed that "Shelton College is thus not merely a secular offshoot of its church, but the church itself is an active ministry;" it "would not exist except to carry out its religious mission." Shelton asserted that even though its students are not all trained for careers in the clergy, all courses taught at Shelton regardless of subject matter are "Biblically related and permeated with religious values," and, thus, are "significantly different" from similarly named courses at secular colleges.

The State responded to Shelton's claims by conceding that it did not intend to stop religious instruction, but that it did intend to prevent the award of academic degrees for that instruction until a license was obtained. The State emphasized that in none of Shelton's pleadings was there any assertion that Shelton's religious beliefs required it to operate a college or award degrees. Shelton countered by arguing that students would not attend the college and faculty would not teach there if their activity were not to culminate in a degree. Shelton argued: "Without degree-granting, the College cannot exist. If it ceases to exist, the religious mission is terminated." Thus, according to its attorneys, Shelton meets the first part of the Sherbert-Yoder test.

As to the second test, whether religious liberty is burdened by the State through its licensure requirement, Shelton attacked the flexibility of New Jersey's licensure standards as providing "grants of unlimited power to state agents to render totally subjective judgments." The use of such terms as "able," "sufficient," "adequate," and "appropriate" in reference to a licensure review of faculty, curriculum, student services, library, physical facilities, etc., are overly mischievous when applied to Shelton, the College argued, and would provide for "total State control of a religious ministry." More specifically, the brief noted that the State's evaluation teams would be charged with the task of determining how well the college is accomplishing its goals. For a pervasively religious

institution, Shelton, asserted that the State would need "to make judgments as to the precise religion of the College, then to enlist evaluators whom the State figured were competent as to that religion." Thus, the State would become "the judge of the propriety and effectiveness of [Shelton's] ministry." The brief's clear implication was that the State's licensure procedures and requirements would restrict the free exercise of Shelton's religious mission since only members of Shelton's sponsoring church could assess the college's success in meeting that mission. The right to "impart and receive religion" was held to be constitutional by the Supreme Court in 1925 in Pierce v. Society of Sisters, 268 U.S. 510 and again in 1939 in Cantwell v. Connecticut, 310 U.S. 296, 307. Shelton's attorneys claimed that New Jersey's regulation standards blur the line between public and private education and "provide little breathing room for academic liberty," thus burdening the college.

The State's attorney argued that the statute and the regulations promulgated thereunder were a legitimate and reasonable exercise of its police power and did not impose a burden on the college. The State further noted that Shelton had had no objection to participating in the Florida licensure process which also requires financial disclosure.

To overcome the final test of the "compelling state interest" established in Sherbert, Shelton asked the rhetorical question "Who is the public which will be threatened if Shelton College is permitted to issue bachelor's degrees?" and are there "factors which assure protection of that public against possible harm"....? Shelton's attorneys claimed that the State provided no evidence that either young adults or prospective employees would be harmed by Shelton's awarding degrees. Shelton pointed to the testimony of its students and their parents who acknowledged they were aware of Shelton's distinctive nature and chose the institution as a means of fulfilling their religious dictates. The only other public

who might be harmed, they asserted, would be the members of the Bible Presbyterian Church and other fundamentalist groups who Shelton seeks to serve. Shelton asserted however, "that [specific] public is not going to mistake Shelton for Princeton.... That public...will take its chances on a Shelton education and a Shelton degree." They continued their argument by claiming that while New Jersey's laws provide useful consumer protection, "adults seeking college education must be presumed to be able to exercise intelligence and discretion in making the important choice of a college." That is the strongest protection factor that the public has against possible harm.

Shelton cited an opinion of the Supreme Court in State of New York v. Cathedral Academy, 434 U.S. 125 (1977), which held that

> The prospect of church and state litigating in a court about what does or does not have a religious meaning touches the very core of the constitutional guarantee against religious establishment ... .

This is surely the case here, they argued. Compliance with the State's licensure scheme would require an entangling relationship between church and state. Such a situation is forbidden since the U.S. Supreme Court, in Public Funds for Public Schools v. Marburger, 417 U.S. 961 (1974) and in Meek v. Pittenger, 421 U.S. 349 (1975) ruled that government programs are invalid if the potential for entanglement exists.

Federal Cases Provide Basis for State Court Ruling

Superior Court Judge Gruccio ruled on November 7, 1980. He found that the earlier clash between the State and Shelton was not dispositive of this litigation. At that time the N.J. State Supreme Court "did not and was not asked to forbid Shelton College from teaching, nor did it consider free exercise or excessive entanglement objections." That Court upheld the state regulation of the awarding of academic degrees but stated that "the resolution in question

does not limit in any way what Shelton may teach. Rather the resolution concerns the power to confer the bachelor degree." Thus, that Court rejected Shelton's free speech claim. (Shelton College, supra.) While the statute that Shelton was challenging was essentially the same as it had been 13 years earlier, Judge Gruccio held that this litigation concerned a different claim, that Shelton's status as a pervasively religious institution exempted it from the licensure requirement. To resolve the matter, the Judge provided an in-depth analysis of the appropriate U.S. Supreme Court rulings, among them Yoder, Braunfield, Walz, Lemon, Regan, and Friedman.

Gruccio noted that in the majority opinion in Yoder, Chief Justice Warren Burger established a two part balancing test regarding the acceptability of Wisconsin's compulsory school attendance laws: the State must not "deny the free exercise of religious belief by its requirement;" and there must be "a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." Burger then identified four underlying questions against which the test would be made.

One question in Yoder was whether or not the daily life of the Amish and their religious beliefs were inextricably intertwined. Such was the case there. Judge Gruccio held that such was also the case at Shelton: the code of student conduct and the academic curriculum were both grounded in Fundamentalist Christian belief.

The second question set forth in Yoder was the length of time that the practice in question has been in existence. Since Shelton was the descendant of the National Bible Institute which was established in 1907 "to train Christian Warriors," Judge Gruccio found that it met that test.

The final two questions concerned whether the religious belief affected by the regulation was a commonly held religious tenet, a rule of the religion, or a

personal preference. In Yoder, the Supreme Court found that all Amish were required to live according to the belief that was being burdened by Wisconsin. Judge Gruccio held in Shelton that, since all members of the Bible Presbyterian Church who were attending college were not required to enroll in Shelton and those who did enroll did so as a matter of personal preference, these two predicates were not met.

Gruccio's analysis of the impact of the state statute on the free exercise of religion by the members of the Bible Presbyterian Church concluded that it placed an indirect burden upon it; that is, it made the exercise of religion more difficult, but did not prohibit the practice of religion. He cited Braunfield v. Brown, 366 U.S. 599 (1961) which decreed that "if the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as indirect." However, he concluded that New Jersey's licensure requirement "neither impedes the observance of the Bible Presbyterian religion nor discriminates invidiously against it."

He went on to examine the issue of the state's interest in licensing colleges and "the degree to which such interest would be impaired by exempting Shelton College from its requirements." Citing the first Shelton case, he concluded that the "State's interest appears to be of greater magnitude" than "the indirect burden imposed on Shelton in the free exercise of its religious belief." He rejected Shelton's claim that consumer protection was adequately guaranteed by subscribing to regional theological accrediting groups.*

The prohibition against excessive entanglement on the part of a state in the affairs of a religion was established in Walz v. Tax Commission, 397 U.S. 664 (1970).

---

* New Jersey recognizes, for purposes of license continuation, accreditation by the Middle States Association as evidence that minimum standards are being adhered to. Shelton stated its unwillingness to participate with Middle States.

At that time, Chief Justice Berger said, "We must also be sure that the end result--the effect [of the legislation]--is not an excessive government entanglement with religion." The Supreme Court went further the following year in Lemon v. Kurtzman, 403 U.S. 602 (1971) when it established a three-pronged test to assess the constitutionality of a statute which interfaces with religion: it should have a secular purpose; its effect should neither promote nor inhibit religion; and, it should not produce excessive entanglement. To be excessively entangling, a statute must require "comprehensive, discriminating and continuing state surveillance."

In that case, the Court upheld the authority of states to license educational institutions "to the extent of making sure that minimum educational standards are met, viz., competent teachers, accreditation of the school for diplomas, the number of hours of work and credits allowed, and so on" provided that surveillance is minor and relates exclusively to matters of accreditation.

Two years ago, in Committee for Public Education and Religious Liberty v. Regan, 100 S.Ct. 840 (1980), the U.S. Supreme Court let stand a New York law which authorized public funds to reimburse expenses incurred by non-public schools performing various testing and reporting services. They held that the required provision of a HEGIS-type data survey was not an excessive entanglement.

On the excessive entanglement issue, Judge Gruccio concluded that the elements of the licensure application (i.e., the provision of information regarding curriculum, students, faculty, services, facilities, library, and finances -- categories similar to those upheld in Regan) were intended to assure that the college meets minimum standards of quality as a precondition of awarding degrees. The involvement of the state in the institution's affairs is limited to a brief campus visit. Further, once issued, the license is valid for a five-year period. Since there is no continuing state surveillance, there is no excessive entanglement.

Regarding Shelton's ancillary claim that it had a First Amendment right to use the word "college" as part of its name, Gruccio cited an opinion by Justice Lewis Powell in Friedman v. Rogers, 440 U.S. 1 (1979), a case which concerned a Texas law which prohibited the practice of optometry under a trade name. Said Powell:

> Here, we are concerned with a form of commercial speech that has no intrinsic meaning. A trade name conveys no information about the price and nature of the services offered by an optometrist until it acquires meaning over a period of time by associations formed in the minds of the public between the name and some standard of price or quality. Because these ill-defined associations of trade names with price and quality information can be manipulated by the users of trade names, there is a significant possibility that trade names will be used to mislead the public.

Gruccio compared the regulation of a trade name which might mislead the public to the use of an academic term. However, he stated that the State did not prove "beyond mere speculation or assumption" that Shelton's use of the term, "college" would mislead the public that Shelton was licensed by New Jersey to award degrees. Accordingly, he found for Shelton in permitting it to call itself a college.

Judge Gruccio issued a permanent injunction against Shelton's operation without a license on December 10, 1980. Thus, New Jersey State Board of Higher Education v. Board of Directors of Shelton College, as it left Judge Gruccio's court, resulted in a ruling which required Shelton College to comply with New Jersey's statutory licensure requirement in order to offer instruction for the purpose of awarding college degrees; however, Shelton was allowed to include the word, "college" in its title.

Federal District Court Proceedings

Before appeal to the State appellate courts was taken, Shelton returned to Federal District Court to seek its intervention on the Constitutional claim.

The District Court, which had been upheld on the procedural issue by the Third Circuit Court of Appeals (see earlier note), began abbreviated hearings on Shelton's request to overturn the State's injunction.

Using the Yoder test, Judge Dickinson R. Debevoise of the District Court came to a different conclusion than did Judge Gruccio [N.J.-Philadelphia Presbytery of the Bible Presbyterian Church et al v. N.J. State Board of Higher Education et al, 514 F. Supp. (D. N.J. 1981)]. He found that, for Shelton to comply with the state's licensure requirements, "heavy burdens" would be imposed on the college since it did not have the resources necessary to provide the administrative and technical personnel who would be needed to prepare the data required by the state.

Thus, while the statute in question was not intended to interfere with a religious practice, it would have the effect of doing so if it were applied to Shelton; this was prohibited by the Supreme Court in Walz.

Debevoise went on:

> "Clearly, application of the State licensing regulations to Shelton has the effect of interfering with the religious beliefs and practices of members of the Bible Presbyterian Church and other similar fundamentalist churches. If Shelton could survive under such regulation and sought to comply therewith, the State would intrude pervasively into matters of religious faith and practice. As matters stand, it appears that Shelton cannot survive at all if New Jersey's licensing statutes and regulations are applied to it. In either event substantial religious rights are affected. It is not an answer to assert that Bible Presbyterians are not required to attend Shelton. Catholics are not required to attend parochial schools. In each case, however, attendance is a means of strengthening, teaching and propagating a religious faith, and, in consequence, the institution is protected from undue state interference."

After concluding that Shelton was burdened by the state's licensing scheme, Debevoise next sought to determine whether there was a compelling state interest for such licensing. He agreed that "the interest of the State involved in the

licensing scheme is a significant and totally legitimate one--maintaining the integrity of the various degrees...by insuring compliance with minimum standards." But, comparing this instance with Wisconsin's compulsory school attendance law which was ruled inapplicable to high school aged Amish, he stated, "The interest of New Jersey in the integrity of the traditional college degree is far less substantial than the interest of Wisconsin in the quality of education of secondary students." He felt this to be the case for the following reasons: there had been no allegation of fraud or misconduct by Shelton; there was no question as to the wholly religious nature of the college; employers, graduate schools and those providing professional credentials (for example, bar examination boards) rely on accrediting associations to determine the value of a degree. Further, he pointed to the fact seven institutions established prior to 1887 are exempt from state licensure and that the state (the Board of Education in the following instance) makes no effort to regulate the degrees (diplomas) granted "by agencies of unconventional religious sects such as the Black Muslims."

Thus, Debevoise enjoined the State from applying the licensure statute to Shelton "until such time as the Supreme Court of New Jersey construes the New Jersey statutes and regulations which are the subject of this action."

Subsequent Proceedings

At the moment, the matter is on appeal to the State Supreme Court and, simultaneously, remains under the jurisdiction of Judge Debevoise's court. Shelton is calling itself a college in its title and literature. Credit bearing instruction is being offered and degrees are being awarded. Such is likely to be the case until there is final resolution of the matter by the U.S. Supreme Court.